

Ireland vol 10

A N
A D D R E S S

THE RIGHT HONOURABLE
HENRY GRATTAN, Esq.

Price One Shilling.

K Dublin. Independent
Volunteers.

A D R E S S

THE RIGHT HONOURABLE

HENRY C. RAFFAN, ESQ.

THE OFFICE

A N
A D D R E S S
T O

THE RIGHT HONOURABLE
HENRY GRATTAN, Esq,

BY THE
Independent Dublin Volunteers,

RELATIVE TO
The SIMPLE REPEAL, and the RECENT INTER-
FERENCE of the EARL of MANSFIELD, in de-
ciding, in an ENGLISH COURT, upon an
APPEAL from IRELAND;

WITH
MR. GRATTAN'S ANSWER:

AND
OBSERVATIONS on Mr. GRATTAN's and
Mr. Y—L—N's Conduct, in a LETTER to
Mr. Y—L—N, the A—y-G—l of IRE-
LAND.

TO WHICH IS ANNEXED,
THE RESOLUTIONS
OF THE
LAWYERS COMMITTEE and CORPS.

PRINTED FROM CORRECT COPIES.

L O N D O N :

Printed for J. DEBRETT, (Successor to Mr. ALMON)
opposite Burlington-House, Piccadilly, 1782.

A D D R E S S

THE RIGHT HONOURABLE
HENRY GRATTAN, Esq.

Independent Dublin Volunteers

RELATIVE TO
THE SMITH FIELD, and the adjacent
parcels of the EARL OF MANSFIELD, in the
COUNTY OF DUBLIN, and
ADJACENT TO IRELAND.

MR. GRATTAN'S ANSWER:



OBSERVATIONS AND MR. GRATTAN'S
ANSWERS TO A LETTER IN
MR. GRATTAN'S ANSWER TO
THE RESOLUTIONS

LAWYERS' GOVERNMENT AND
THEIR OWN CONDUCT

LONDON:
Printed by J. DEBRIE, (near to Mr. Aikin's)
at the Edinburgh House, Strand, 1821.

(A N)

A D D R E S S

TO THE

RIGHT HONOURABLE
HENRY GRATTAN, Esq.

At the pressing Request of a number of high and respectable Characters, we have obtained authentic Copies of the following interesting and important Papers, which is the leading Subject of England and Ireland at this hour.

Independent Dublin Volunteers.

AT a Meeting of the Corps, December the 1st, 1782.

Captain HENRY WHITSTONE in the Chair,

Resolved unanimously, That the following Address be presented to our Colonel, Henry Grattan, Esq.

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To

(2)

TO

Colonel HENRY GRATTAN.

The Address of the Corps of **INDEPENDENT
DUBLIN VOLUNTEERS:**

SIR,

An unsuspecting and liberal confidence, natural to the people of Ireland, betrayed this Corps into a belief of sincerity in the intention of Great-Britain, and they accordingly expressed by a public resolve, their satisfaction at the Repeal of an English Declaratory Law; a law enacted during an intoxication of power against a country, then depressed by the tyranny of its usurpers, and bleeding in consequence of its own unhappy intestine divisions.

But

But the experience of ages, and many recent alarming circumstances, have awakened fears, which must naturally extend to the breasts of all who wish unequivocal precision established in place of present uncertainty, lest the liberties of this country, heretofore wantonly trampled on, may at a future period, be garbled or explained away, by corrupt or chimerical servants of the Crown.

We feel the time now arrived, when silence becomes criminal, after a Committee, chosen from the best informed body in this nation, the Lawyers Corps, have declared our present security inadequate, with whose report, and the two following resolutions of that Corps, we most perfectly agree:

“ That a voluntary and express renunciation
 “ on the part of Great Britain, of all claim of
 “ right to bind Ireland, either internally or ex-
 “ ternally, would, in our opinion, give great
 “ satisfaction to this country, and render the
 “ union between the two kingdoms permanent
 “ and indissoluble.

B. 2 “ That

“ That an act of the Irish Parliament, ascertaining and securing the rights of this country, is, in our opinion, necessary for the establishment of its liberties.”

Because their very great knowledge of the laws, and in these points their indefatigable zeal and researches, have placed the situation of public affairs in the clearest point of view.

Therefore, we earnestly wish these our opinions, in which we find ourselves supported by all virtuous Irishmen, may meet your hearty concurrence and strenuous support, to establish on a secure and lasting foundation, the Rights and Liberties of this much-injured Country, as we are determined, at the risque of every thing dear to us, to exert all constitutional means, to transmit them to posterity inviolate.

HENRY WHITESTONE, Chairman.

Resolved, That said Address be signed by the Chairman, who, with the Committee that prepared the same, do present it to Colonel Grattan.

Resolved unanimously, That the Thanks of this Corps be hereby given to this Committee, for their trouble in preparing this Address.

The

The Chairman and Committee having waited on Colonel Grattan, he returned the following answer:

TO THE

Independent Dublin Volunteers.

GENTLEMEN,

I was sorry that your Address should have been published before it was presented, because I do not wish to appear tardy to respect your opinions, or to disclose mine.

I applauded the liberal confidence which you reposed in the sincerity of the British nation; I hope she may long continue to deserve, and you to entertain that just and necessary sentiment.

I agree with you, that the Sixth of George I. was passed when we were depressed by the "intoxication of power, and weakened by intestine divisions."

divisions." There was at that time in the stamina of the community a radical weakness; we had taken precautions against our own strength and liberty, by the emaciating cruelty of barbarous laws, and we felt in our own bondage the natural returns of our own tyranny: fortunately, we have discovered the error; it was your policy, and my decided opinion to adopt the Catholic body; I conceived it to be a sacred truth, and written as as it were in the tables of Fate, "That the Irish Protestant should never be free until the Irish Catholic ceased to be a slave;" by the charter of toleration those intestine divisions which you speak of, have ceased, and with them the domination of Great Britain has departed.

The Parliament of Ireland has asserted its legislative independency, the Parliament of Great-Britain has acknowledged it, fully acknowledged it: I speak, warranted by the record of the proceedings, and by the almost unanimous declarations of both Houses of Parliament: I speak the legal language and expressed opinion of the most eminent men of the bar, and I might add legal personages still more high and authoritative.

In this conviction, and with this authority, you will not suppose that I shall subscribe to the resolutions,

lutions, to which you have so lately acceded; a member of one House of Parliament, and attached to the privileges of both, and to the Parliamentary constitution of Ireland, I do not see that emergency, which should induce, or warrant us to refer, revise and contradict a resolution of the House of Commons, and, under colour of fortifying the Independency of our Parliament, supersede its authority.

I concur with you in every personal compliment to the seven gentlemen who framed the report you speak of, but when I differ from you, it is not surprizing that I should have no scruple to differ from them.

I know of no circumstance, except one, which has recently happened to alarm you, the entertaining and deciding by the Court of King's Bench, in England, an Irish cause, is, no doubt, a very great infringement: You do not imagine that I mean to rest under it; but I shall never suppose such a measure to be the act of England, unless her Parliament shall hesitate to do it away in a manner the most clear, comprehensive, and satisfactory.

I have given you my sincere opinion, I have explicitly differed from you with regard for the
corps,

corps, and an affection for the men who compose it. The natural result of my dissent is the ceasing of my command; I do not resign, lest peremptory resignation should appear an act of unmanly offence; in the succession of officers you have an opportunity to indulge the range of your disposition: invited to the command without solicitation, I shall render back the honour without the emotions of resentment, or the affectation of indifference.

In the warm hours of your panegyric, I made every allowance for a sanguine disposition, in the present hour, when the same disposition may go in the other direction, I shall make the same allowance.

There is a final justice in public opinion on which I do not fear to stand.

I am, Gentlemen,

With great respect,

Your faithful and humble servant,

HENRY GRATTAN.

At

At a further MEETING of the CORPS, December 6, 1782,

A complaint having been made of the publication of several papers entitled, the Report of the Committee of Independent Dublin Volunteers, and containing the above Address,

Resolved unanimously, That the publication of the Address of this Corps to Colonel Grattan, without authority, and before the same was presented, was an high insult to the Corps.

Resolved, That any member of this Corps, who was aiding in the said publication, merits the severest censure, and is unworthy of being continued a member of the Corps.

Resolved, That the above Address, Answer, and Resolution, be published three times in the Dublin and General Evening Posts.

Signed by order,

CH: BERKELEY KIPPAX, Sec.

TO THE

Right Hon. B. Y-LV---N.

So, Sir, it seems that this precious business of Lord Mansfield's late determination, is to be chiefly ascribed to your inattention in drawing up the act, which passed last sessions, "For the redress of erroneous judgments, orders, and decrees." It is well known likewise, that your friend Mr. G—t—n was consulted by you on the subject, so that the plea which Lord Mansfield hath used, viz. "That the Irish Parliament have not perfected their design, and that by his determination he gave them the earliest opportunity of correcting their error," is a debt that he obligingly owes to the once renowned characters Mr. G—t—n and Mr. Y—lv—n.

The whole unfortunate business, Sir, of our *national security*, has turned out, on strict investigation, to have been conducted with a shameful
preci-

precipitancy. Mr. G—tt—n has presented his country with the shadow security of *simple repeal*, for which he has *most meritoriously* got 50,000l. of the national money; and you, Sir, in conjunction with Mr. G—tt—n, have given us a bill for the redress of erroneous judgments, &c. which left the appeal to the English Court of King's Bench exactly in the state the law stood before, and on which bill, Lord Mansfield, in open court, stamped his opinion of *insufficiency* and *error*. For this *wise* and *able* conduct, Mr. Y—lv—n is appointed Att—y—G—n—l of Ireland.

Had you, Sir, and your aforesaid friend, contemplated for months a mode to make Ireland loose every advantage, in point of her constitutional rights, which she had won by opening a loose field of altercation to England, which she might embrace at any convenient season to return us back again to our former condition, you could not have more effectually succeeded than in the system of *simple repeal*, and in your bill for redressing erroneous judgments. But, however distant your country is from consummating her wishes, you and your friend have completed yours. He has got from the liberality of the nation more money than he knows how to use—and you have got from the liberality of government,

ment, an office that long engaged your heart's adoration.—

You have both sacrificed your popularity, by becoming staunch friends to an Administration that appears utterly indifferent about giving Ireland a security of her liberties worthy her cause; and, you have certainly got each of you more of the loaves and fishes than your deserts merited, if we reason from that gross neglect which characterizes your conduct on measures of the greatest moment, and on the firmness of which depended the everlasting freedom of Ireland.

However, Sir, Lord Mansfield's conduct may be censured in determining on a point of appeal, *subsequent* to the repeal of the 6th of George I. which he knew in his conscience was meant at least, however inadequate the means, to confine for the future, all matters of law and legislation to the Judicial Courts and Parliament of this kingdom, it takes not from that severity of animadversion which rests on you for giving him any plea or opportunity for so acting.

It is urged, indeed, on the behalf of Lord Mansfield, that your bill leaving the matter of appeal on *common law* writs of error, as it stood
before

before his enacting such bill, that therefore his Lordship had a right to determine on the appeal to his Court. Yet it may be said, that Lord Mansfield could not be ignorant of the umbrage his determination would give to Ireland. It was not a very liberal mode of acting in his Lordship, *to take an advantage* of what he terms an *imperfection of design*, and *error and omission* of our Parliament.

It would have been more politically wise, at least for the harmony of the two kingdoms, especially at a moment when other dissatisfactions extensively prevail among us, to have waved the determination, or given sufficient time to the Parliament to have amended the error and omission; or rather, I should say, Sir, you and your friend Mr. G—tt—n's *error and omission*. His Lordship's readiness, therefore, to determine on the appeal in question, however legally right, from the *insufficiency* of your bill was in fact politically wrong;—that is, I repeat, if Lord Mansfield wished to conciliate and not encrease discontents in Ireland. The suspension of his opinion, *pro tempore*, could not have been injurious to the parties, because it is to be supposed the affair will ultimately be determined in the Irish House of Lords, when your bill shall be amended,

amended, and drawn up by men *equal to the business*.

In order, Sir, that every man conversant in the question, may see the grossness of neglect committed in your bill, respecting appeals on writs of error founded in *common law*, I shall quote the preamble of the bill, on which the whole matter rests, and which is as follows:

“ Whereas erroneous judgments, orders, and decrees, ought only to be reformed finally in the high Court of Parliament in this kingdom, be it declared and enacted by the King's Most Excellent Majesty, &c. that from henceforth all such judgments, orders, and decrees, shall be finally examined and reformed in the high Court of Parliament in this kingdom only, any law, statute, or practice, to the contrary thereof in any wise notwithstanding.

This preamble includes the whole essential matter of the bill, so far at least as relates to the present question. Here, Sir, it is obvious to the youngest barrister of our Courts, and ought to have been most particularly obvious to so great a lawyer as his Majesty's Att——y G——l, that the judgments, orders and decrees above specified, relate

relate only to appeals on them *in equity*, and contains not the least provision for appeals, as before observed, on *common-law* writs of error. Nay, so far from your bill's providing for the final issue or determination of *such writs of error*, it does not even specify them to be returned to *our own Court* of King's Bench, previous to their being finally examined and reformed in the Parliament of Ireland.

Leaving then the law as it stood before, viz. that writs of error at *common law* may be returned to the English Court of King's Bench, your countrymen, Sir, have to thank you and your fellow-labourer in your *fenceless* vineyard of *national security*, that Lord Mansfield, to use a common phrase, has been able to drive a coach and six through your bill for redressing erroneous judgments.

I shall make Sir, only two reflections on this matter. The first is, that from Lord Mansfield's readiness to take an advantage of what he acknowledges to be an *error* and *omission* in our Parliament, we ought to be most strictly careful, that the act for finally establishing our rights, leave not any handle for any English Judge to set aside its doctrine. And next, Sir, that instead of your soliciting Lawyers to sign a protest which you dare
not

not send abroad, you ought to be ashamed that so many juniors of the Lawyers Corps have demonstrated themselves your superiors in judgment on a question, that concerns the everlasting welfare of Ireland. I have only devoutly to hope and wish that our final plan to secure our freedom will not be entrusted to the direction or execution of Mr. G—t—n or Mr. Y—l—v—n.

M A R C U S.

The following Resolutions of the Lawyers' Committee and Corps being much a subject of conversation, we presume will be acceptable to the Public at large.

L A W Y E R S C O R P S,

JULY 20, 1782.

Colonel PEDDER, in the Chair.

Resolved, That a committee of nine be now elected by ballot, to enquire and report to this corps, on the 17th of November next, whether any, and if any, what acts have been done by
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the British Parliament, whereby it must be deemed to have fully, finally, and irrevocably acknowledged the sole and exclusive right of the Irish Parliament to legislate for this country, in all cases as well external as internal.

And a committee was elected accordingly.

November 17, 1782.

Colonel STAWELL, in the Chair.

The Committee having presented their report,

Resolved unanimously, That the report of the Committee be now received and read, and the same was received and read, and is as follows:

To the LAWYERS CORPS.

In obedience to your order of the 20th day of July last, your Committee have considered the question to them referred, and have unanimously come to the following resolutions:

First, That in all cases of adjustment between
nation and nation, where the constitutional rights

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of

of the one have been invaded and usurped by the other, and where the usurpation of the aggressor is to be disclaimed, and the original rights of the aggrieved acknowledged, such disclaimer and acknowledgment ought necessarily to be conceived in terms as strong and clear as the utmost range of language can supply.

Secondly, That if such usurpation has been of long duration; if it has been repeatedly and grievously exercised; if it has been maintained by the strong hand of power, and from time to time contended for as a right by some of the most learned of the usurpers; but, above all, if it has ever upon any great and critical occasion been solemnly recognized and declared as law by the Supreme Power of the usurping State, it becomes still more necessary, that the disclaimer of such usurpation should be conceived in terms so explicit and unequivocal, as to exclude even the possibility of future doubt or cavil.

Thirdly, That the British claim of a right to legislate for Ireland was, in its origin, groundless, and unjust; that it subsisted, according to some, for near a century and an half; according to others, for about five hundred years; and, in the opinion of the British legislature, as declared by

by their memorable act of the 6th of Geo. I. chap. 5, from the earliest connection between the two kingdoms; that it was maintained by a power which the unhappy situation of this country rendered irresistible, and was frequently supported by the opinions and arguments of some of the ablest judges, some of the best lawyers, and some of the most eminent juridical writers that perhaps the British nation could ever boast of.

Fourthly, That such usurped right was actually exercised in a variety of instances; and, that many acts affecting to bind Ireland are still to be found on the British statute-roll unrepealed, and consequently, as it should seem, of as much force and energy (at least in the opinion of British judges and lawyers) as they could have been deemed to be before the passing of the above-mentioned act of the 6th of Geo. I.

Fifthly, That about sixty-two years ago, the British legislature thought proper to pass the above-mentioned act of the 6th of Geo. I. the title, preamble, and body of which, we find to be as follows:

“ An act for the better securing the dependency of the kingdom of Ireland upon the crown of Great-Britain.

“ Whereas the House of Lords of Ireland have of late, against law, assumed to themselves a power and jurisdiction to examine, correct and amend the judgments and decrees of the court of justice in the kingdom of Ireland, therefore, for the better securing of the dependency of Ireland upon the crown of Great-Britain, may it please your most Excellent Majesty, that it may be declared, and be it declared by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That the said kingdom of Ireland hath been, is, and of right ought to be, subordinate and dependent upon the Imperial Crown of Great-Britain, as being inseparably united and annexed thereunto; and that the King's Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons of Great Britain, in Parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the kingdom and the people of Ireland.

“ And

“ And be it further declared and enacted by the authority aforesaid, That the House of Lords of Ireland have not, nor of right ought to have, any jurisdiction to judge of, affirm, or reverse any judgment, sentence or decree given or made in any court within the said kingdom, and that all proceedings before the said House of Lords upon such judgment, sentence or decree are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever.”

Sixthly, That the above recited act is manifestly a declaratory act, recognizing what was by the British legislature deemed to have been antecedent law, not creating any new law, and that it has been so construed and considered by every British lawyer, and juridical writer who appears to have spoken or written on the subject.

Seventhly, That a mere simple repeal of a declaratory act, leaves the law as the legislature deemed it to have been before the passing of such act.

Eighthly, That the late repeal by the British legislature of the 6th of Geo. I. is conceived in the following terms:

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“ An act to repeal an act made in the 6th year of the reign of his late Majesty King George the First, intituled, An Act for the better securing the dependency of the kingdom of Ireland upon the crown of Great-Britain.

“ Whereas an act was passed in the sixth year of the reign of his late Majesty, King George the First, entitled, An Act for the better securing the dependency of the kingdom of Ireland upon the crown of Great-Britain, may it please your Most Excellent Majesty, that it be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, the above-mentioned act, and the several matters and things therein contained, shall be, and is and are hereby repealed.”

Ninthly, That the great and important question, between the two nations, with respect to the independence of Ireland, must, as we conceive, be now deemed to stand upon the same ground that it did before the passing of the 6th Geo. I. unless the above-mentioned repeal on that act has disclaimed its principle.

Tenthly,

Tenthly, That the British Parliament have not by the above act of repeal, expressly disavowed their claim of a right to legislate for Ireland; and though we firmly believe, that they meant fairly and honourably by this nation in every respect, yet we conceive, that they have, by such their omission, at least left room to doubt, whether it was their intention for ever to abdicate that claim; and the rather so, as they so strongly, and in such pointed terms, asserted it, at the time when they seemed determined to support it: nor does it occur to your Committee, that the British Parliament would at a future day be precluded, by the tenor of the above act of repeal, from ascribing it either to justice or expediency, as they might think most proper.

Eleventhly, That the words, "the several matters and things therein contained," which occur in the late act of repeal, can never, in our opinions, warrant the inference attempted to be drawn from them, namely, "That the British legislature had thereby renounced the principle of the 6th of George I." for that such words are merely words of course, occurring in every, or almost every, repealing act that has ever been passed.

Twelfthly,

Twelfthly, That the several circumstances which attended the late act of repeal did not, in our opinions, supersede the necessity of an explicit disclaimer of the principle of the 6th of George I. because we apprehend that the security of our constitutional rights ought to rest upon the solid foundation of express acknowledgment, and not on the unsteady basis of fugitive circumstances, equivocal in themselves, and which, at a future day, may be variously conceived, and as variously interpreted; and we the rather think so, because we find that those circumstances are, at this hour, variously represented by different persons and different parties.

On the whole, your Committee are unanimously of opinion, That the British Parliament "have not done any act whatsoever, whereby they must or can be deemed to have fully, finally, and irrevocably, or in any adequate manner acknowledged the sole and exclusive right of the Irish Parliament to legislate for this country in all cases as well external as internal."

Resolved, That this report be taken into consideration by the Corps, at two o'clock on
Wednesday

Wednesday next, and that the same be printed in the mean time for the use of the members.

Wednesday, November 20.

Colonel STAWELL in the chair.

Resolved, That the Corps do now agree to the report of our Committee:

Ayes 77 ——— Mr. Dillon, teller.

Noes 21 ——— Mr. Boyd, teller.

Majority 56.

Resolved unanimously, That as we firmly believe the legislature of Great-Britain meant fairly and honourably by this country in every respect, we cannot doubt of their willingness expressly to renounce all claim of right to legislate for Ireland.

Resolved unanimously, That a voluntary and express renunciation, on the part of Great-Britain, of all claim of right to make laws to bind Ireland, either internally or externally, would, in our opinions, give great satisfaction to this country, and render the union between the two kingdoms permanent and indissoluble.

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Resolved

Resolved unanimously, That an act of the Irish Parliament, expressly ascertaining and securing the rights of this country, is, in our opinion, necessary for the establishment of its liberties.

Resolved unanimously, That the great attention and industry of the Committee, in considering the question referred to them by this Corps, and the very able manner in which they have made their report, demand our warmest acknowledgments; and we feel the utmost satisfaction in returning them our sincere thanks for their conduct on this occasion.

Resolved unanimously, That the above proceedings and report be published.

WILLIAM STAWELL Chairman.



T H E E N D.

